IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16845 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MALPUR TALUKA KELWANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16845 of 2003

MR NC SHAH for Petitioner No. 1

MR NV GANDHI for Petitioner No. 1

MR RM CHAUHAN, ASST. GOVT. PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 05/08/2004

ORAL JUDGEMENT

1. Rule. Mr. Chauhan, learned Assistant Government Pleader appears for respondents No. 1, 2 and 3 and waives

service of rule. With the consent of the parties, the matter is taken up for final hearing.

2. Short facts of the case are that the petitioner Trust is running a school, popularly known as Ashram Shala in Sabarkantha District and it also runs a hostel for scheduled tribe students at village Malpur. It is the case of the petitioner that the grant is being provided by the State Government for running the hostel for the aforesaid students. It appears that on 19.2.2003, a surprise check was made and it was found that only 16 students were granted admission as against the approved strength of 25. It was also found that out of 16 students, 6 students were absent and thus only 10 students were present, and even out of 16 students, only 5 students belonged to schedule tribe. It was also found that the approval for appointment of Cook and Watchman is not obtained. It appears that thereafter, on the basis of the aforesaid irregularities found at the surprise check, a show cause notice came to be issued to the petitioner, which was replied to by the petitioner. Ultimately, on 16.4.2003 the order has been passed by the Director, Schedule Tribe Welfare whereby the strength of the hostel was reduced from 25 to 20 and grant was withheld for one year, i.e. 2002-2003. The petitioner carried the matter before the State Government in appeal, and ultimately, as per the decision dated 4.7.2003 of the State Government, the appeal is dismissed, and under these circumstances, the petitioner has approached this Court.

3. Mr. Gandhi for the petitioner submitted that even if the order of the Director is allowed to continue for the reduction of the strength from 25 to 20, in any case, the petitioner would be entitled for the disbursement of the amount for 16 students who were admitted, and for the approved staff of the hostel, which interalia includes Warden, and the expenses incurred for providing food to the students. Mr. Gandhi submitted that such expenses for the year 2002-03 comes to Rs.1,28,333-54 as per the details submitted before the Deputy Secretary, copy whereof is produced at Annexure 'E' to this petition. He submitted that the permanent reduction of the strength is also illegal, and as such, the strength could have been reduced only for a particular year. Mr. Gandhi lastly submitted that even if the matter is considered for giving directions to the authorities to consider for allowing expenses on the basis of strength of 13 students [because out of 16 students 3 were found permanently absent], the same would serve the purpose of the petitioner in the present

petition.

4. Mr. Chauhan, learned Assistant Government Pleader has supported the orders passed by the authorities. However, he submitted that even if this Court is inclined to consider the matter for giving directions to the authorities to allow expenses to the extent of 13 students, the matter will have to be reconsidered by the competent authority.

5. Having considered the above, it appears that there is irregularity in running the hostel by the petitioner and the finding of the fact by the authority, and the confirmation thereof by the appellate authority, cannot be interfered with by this Court while exercising power under Article 226 of the Constitution of India. However, if the matter can be considered without disturbing the finding of fact, it may stand on a different footing. Even if the finding recorded by the authority in its order dated 16.4.2003 are considered as it is, the effect is that 16 students were admitted as against the total strength of 25 students. The second finding is that out of 16 students, 3 students had continuously remained absent and only 5 students were admitted belonging to scheduled tribe. Another finding is that no approval is obtained for appointment of cook and watchman. Even if all findings are considered as it is, then also the authority could not have ignored that 13 students were admitted and were staying in the hostel and, therefore, the petitioner has incurred expenses for providing food and for running the hostel to the extent of 13 students. Even for salary of the staff excluding the cook and the watchman, expense is incurred by the petitioner, and, therefore, it was not proper to withheld the total grant for the academic year of 2002-03 and the authorities ought to have considered the matter to the extent of allowing the expenses for 13 students and the staff of the hostel which is duly approved by the authority, barring the salary of cook of watchman. As the aforesaid aspect is not considered and the total grant is withheld for the academic year of 2002-03, it appears that the order has been passed without proper application of mind to that extent and the matter is also not considered on the aspect of proportion of punishment or proportion of the grant to be withheld for the year 2002-03. The aforesaid is not even considered by the State Government while hearing the appeal, though it was brought to the notice of the appellate authority by the petitioner in the submissions dated 4.7.2003, copy whereof is produced at Annexure 'E'. Therefore, consequentially, the order in appeal passed by the State

Government would also be rendered without proper application of mind.

6. In view of the above observations and discussion, the order passed by the Director as well as by the State Government so far they relate to withholding the grant for 13 students and for approved staff of the petitioner's hostel for the academic year of 2002-03 deserves to be quashed and set aside. It is further directed that the Director, respondent No.2 herein shall examine the record of the petitioner already produced and which may be produced further by the petitioner at the time of hearing and shall decide the quantum of amount of expenses already incurred by the petitioner for 13 students and the approved staff of the hostel, and the petitioner would be entitled to disbursement of the said amount which may be computed by the Director accordingly. The amount so computed and arrived at shall be disbursed within a period of three months from the finalization of the figure by the Director, as indicated earlier.

7. The petition is partly allowed. Rule partly made absolute accordingly. Considering the facts and circumstances, no order as to costs. Direct service is permitted.

[JAYANT PATEL, J.]
mathew